

Policies and Procedures

Subject: Right to Access and Amend Protection Health Information and Preservation of Records

Policy Number: HIPAA 4.6

Effective Date: 7/1/04

Entity Responsible: Division of General Counsel

Revision Date: 1/11/18

1. Purpose:

This policy provides instruction and guidance on the preservation of current, former, and deceased service recipients' records and the right of persons to access and amend protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, other relevant Federal law, and Tennessee state law.

2. Policy:

2.1: Preservation of Records

2.1.1: All recorded must be preserved for a minimum of ten (10) years after the termination of service (when the service recipient was discharged from the facility or ended treatment, whichever is later).

2.1.2: Records of service recipients or former service recipients who were minors when they were discharged or when they ended their treatment should be preserved for ten (10) years after the service recipient's eighteenth (18) birthday.

2.2: Upon a written request, a service recipient or former service recipient sixteen (16) years of age or older, parent(s) or guardian(s) of a service recipient who is under the age of sixteen (16), a legal representative of a service recipient or former service recipient, shall be permitted with the opportunity to inspect, review, and

obtain a copy of PHI maintained the service recipient's medical record so long as the PHI is maintained at TDMHSAS or a REMHI. This request shall be honored no later than thirty (30) days after receipt of the written request.

2.2.1: Access will not be provided if access to the PHI is strictly prohibited or restricted by another statute in which case access shall be denied and such denial is not subject to review.

2.2.2: Access will not be provided if a qualified mental health professional (QMHP) has determined, in the exercise of their professional judgement, that the access requested is reasonably likely to cause substantial harm to the health, life, physical safety of the service recipient or another person in which case access shall be denied and such denial is subject to review.

2.3: The TDMHSAS or RMHIs may deny a request to access PHI, and the denial is not subject to review under the following circumstances:

2.3.1: The PHI is in psychotherapy notes;

2.3.2: Access to PHI is expressly restricted or strictly prohibited by another statute;

2.3.3: The PHI is compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding;

2.3.4: The TDMHSAS or the RMHI is subject to the Clinical Laboratory Improvements Amendments of 1988 (CLIA), 42 USC §263(a) to the extent the provision of access would be prohibited by law, or the TDMHSAS or the RMHI is exempt from CLIA pursuant to 42 CFR Part 493.3(a)(2). These provisions of the CLIA concern laboratory tests and research conducted in forensic facilities and reporting of communicable diseases;

2.3.5: The PHI is requested by an inmate of a correctional institution and the disclosure would jeopardize the health, safety, security, custody, or rehabilitation of the inmate or other persons inside or outside the correctional institute;

2.3.6: The PHI is created or obtained by a covered health care provider in the course of research that includes treatment. In such cases, access to PHI may be temporarily suspended for as long as the research is in progress, provided the service recipient gave informed consent to the denial of access when agreeing to participate, and with the understanding that access would be reinstated at end of research;

- 2.3.7: The PHI Requested is contained in records subject to the Privacy Act, 5 USC § 522a and denial of access meets the requirements of the Privacy Act. This section of the Privacy Act contains definitions of records maintained on individuals as well as conditions of disclosure and access. The HIPAA regulations regarding an individual's access to his or her private information is based on the Privacy Act guidelines;
- 2.3.8: The PHI requested was provided by someone other than health care provider under a promise of confidentiality and the access would reasonably likely reveal the source of that information.
- 2.4: The TDMHSAS or RMHI may deny a request to access PHI, and the requester is entitled to have the denial reviewed by a QMHP who did not participate in the original decision to deny access, under the following circumstances:
 - 2.4.1: The QMHP who made the original decision to deny access determined, in the exercise of his or her professional judgement, that the access requested is reasonably likely to cause substantial harm to the health, life, or physical safety of the service recipient or another person.
 - 2.4.2: The PHI makes reference to another person who is not a licensed health care provider and a QMHP has determined in the exercise of his or her professional judgement, that the access is reasonably likely to cause substantial harm to that other person.
 - 2.4.3: The access request is made by the service recipient's or former service recipient's legal representative and a QMHP has determined, in the exercise of his or her professional judgement, that the access is reasonably likely to cause substantial harm to a service recipient, former service recipient, or another person.
- 2.5: Right to Request an Amendment
 - 2.5.1: A service recipient, former service recipient, or service recipient's legal representative may request, in writing, to have the medical record amended by revision, deletion, or addition. An explanation for the change(s) must be included with the request.
 - 2.5.2: The TDMHSAS or RMHI may or may not accept the requested amendment. If the TDMHSAS or RMHI refuses the amendment, the requester may file a written statement disagreeing with the refusal. This statement will be documented and placed in the service recipient's medical file.

- 2.6: All actions (access requests or denials; requests to review the denial; review denials; requests to amend; amend denials; and any other actions) must be documented and placed in the service recipient's medical record.

3. Procedure/ Responsibility:

- 3.1: When a TDMHSAS or RMHI employee receives a written request to inspect, review, copy, or amend the medical record, the employee must forward the request to the TDMHSAS Privacy Officer or the RMHI Privacy Officer. If a verbal request is received, the employee must inform the individual that state law requires the request to be in writing and may provide a copy of the TDMHSAS Authorization to Release Information form on the TDMHSAS website.
- 3.2: If the requester requires assistance in completing the Authorization to Release Information form or written request, the TDMHSAS or RMHI employee shall provide assistance. The employee must deliver the request to the appropriate person as explained in 3.1.
- 3.3.: The TDMHSAS Privacy Officer or the RMHI Privacy Officer must review the request and determine if there is an obligation under HIPAA, other federal law, or state law to fulfill the request. The RMHI Privacy Officer may consult with RMHI attorney or the TDMHSAS Privacy Officer as needed to make a decision.
- 3.4: If TDMHSAS Privacy Officer or the RMHI Privacy Officer determines that access must be provided, then the responsible Privacy Officer must provide the PHI to the requester no later than 30 days from receipt of the request. The PHI must be provided at a convenient time and location and in the form that is requested. If access to the PHI cannot be provided in the form requested, the requester and the responsible Privacy Officer may agree on an alternative form to provide access. No cost shall be charged to review or inspect. Charges for copies shall be in accordance with either the fee schedule of the Tennessee Office of Open Records Counsel or the TDMHSAS or RMHI policy.
- 3.5: If TDMHSAS Privacy Officer or the RMHI Privacy Officer denies access to the PHI, then the responsible Privacy Officer must notify the requester of the denial, in writing, no later than 30 days from the receipt of the request.
- 3.5.1: The notification of denial must state (1) basis for denial and if applicable, a statement that the requester may have the right to have QMHP chosen by the TDMHSAS/ RMHI review the decision to deny access to PHI; (2) the procedure for which a requester may file a complaint with TDMHSAS or RMHI including the title, address, and telephone number of the person with whom the complaint can be filed; and (3) the procedure by which the

requester may file a complaint with the Secretary of the U.S. Department of Health and Human Services.

- 3.6: If the requester chooses to have the denial of access to PHI reviewed, the TDMHSAS Privacy Officer or the RMHI Privacy Officer must appoint a QMHP, not involved in the original decision to deny access, to review the request. The requester and the TDMHSAS and RMHI are bound by the determination made by the reviewing QMHP.
- 3.7: If the request to amend PHI is accepted, the record must be amended within ten (10) working days of receiving the request. The requester must be informed no later than ten (10) working days from the date of the amendment. The request for amendment and a copy of the TDMHSAS/ RMHI response must be placed in the medical record pursuant to 2.6.
- 3.8: If the request to amend PHI is denied, the TDMHSAS or RMHI must provide a written explanation to the requester no later than ten (10) working days of the receipt of the request.
 - 3.8.1: The written explanation must state (1) the basis for the denial; (2) a statement about the requester's right to file a written statement of disagreement with the denial, and the process for filing such statement; (3) the procedure, if any, for further internal review of the decision.
- 3.9: If any disputed information is disclosed, the disclosure must clearly note that the information is disputed, and provide a copy of the statement of disagreement, and a statement of the reasons for not making the requested amendment.
- 3.10: If any of the disputed information is amended, it should be clearly noted in the medical record including (1) the date and time the change(s) were made; and (2) the name of the person making the change. This information should be noted in the chart and become a part of the medical record. The service recipient may not personally alter the record.
- 3.11: All actions (access requests or denials; requests to review the denial; review denials; requests to amend; amend denials; and any other actions) must be documented and placed in the service recipient's medical record. This must be kept for six (6) years from the date of the request to access or review, any subsequent denial to review or amend, and any other actions consistent with this policy.

4. Other Considerations

4.1: Authority

42 CFR §§164.524; 164.526; 42 CFR §493(a)(2); 5 USC 522a; T.C.A. §§ 33-3-101, 104, 112, 113, 206, 208; TCA §68-11-304.

Approved:

Marie Williams, oz

Commissioner

1-11-18

Date